

Michael Winsor
Special Assistant Attorney General
Montana State Auditor's Office
840 Helena Avenue
Helena, MT 59601
(406) 444-2040

Attorney for the Department of Insurance

**BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
STATE OF MONTANA**

IN THE MATTER OF:)	Cause No. INS-2007-75
)	
DNH CONSULTING GROUP, LLC, and)	NOTICE OF PROPOSED AGENCY
ERIC DEVASH, individually and as the)	ACTION AND OPPORTUNITY FOR
sole member of the foregoing entity,)	HEARING
)	
)	(PERMANENT CEASE AND DESIST
)	ORDER, RESTITUTION AND
)	ADMINISTRATIVE FINES)
Respondents.)	

RESPONDENTS PLEASE TAKE NOTICE:

Staff of the Insurance Department of the Office of the State Auditor and Commissioner of Insurance of the state of Montana (Department), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. § 33-1-101, et seq., is proposing that the Commissioner take disciplinary action against the Respondents for violations of the Montana Insurance Code. Specifically, staff is proposing pursuant to Mont. Code Ann. § 33-1-317 that the Commissioner impose a fine not to exceed \$25,000.00 for each violation of the Montana Insurance Code in addition to all other penalties imposed by the laws of Montana.

Additionally, the Department requests that the Cease and Desist Order be made permanent and that Respondents be required to make full restitution to Montana citizens for all financial losses sustained as a result of fraud together with interest at a rate of 10% per annum from the date of the fraud pursuant to Mont. Code Ann. § 33-1-1302. Additionally, for violations of Mont. Code Ann. § 33-38-105, the Department seeks to impose an administrative fine of up to \$25,000.00 for each day of violation.

The Commissioner has authority to take such action under the provisions of Mont. Code Ann. §§ 33-1-102, 33-1-311, 33-1-314, 33-1-317, 33-1-318, 33-1-1302, 33-38-101, 33-38-103, 33-38-104, and 33-38-105.

ALLEGATIONS OF FACT

1. DNH Consulting Group LLC (DNH), d.b.a. Health Services, is a Florida limited liability company formed in December of 2005.
2. Erik Devash is the sole managing member of DNH.
3. DNH purports to be a purveyor of pharmacy discount cards.
4. DNH markets its product through telephone solicitors. DNH's telephone solicitors require purchasers to give their bank account information so that DNH may take automatic withdrawals from consumer accounts. The total price of the DNH card is or was \$499.00.
5. DNH claims its discount card provides consumers with an average of 20-90% off the regular retail price for prescriptions and a discount of 5-90% on generic prescriptions and a 5-75% discount on name brand prescriptions.
6. DNH purported to offer other discounts on prescribed medical equipment, lab work, contact lenses and imaging such as MRI scans and x-rays.

7. DNH did not, at all times material hereto, have contracts with any medical care or prescription drug providers in the state of Montana which obligated the providers to honor the DNH discount card.

8. DNH did not provide the Department of Insurance with the name and contact information of its officer in charge of regulatory compliance prior to soliciting its product in the state of Montana.

9. DNH did not disclose to discount card purchasers, in enrollment materials, that purchasers had thirty days within which to cancel the purchasers' memberships.

10. DNH did not state on its medical care discount card that the product was not insurance in bold and prominent type of at least 14 points in size.

11. DNH did not provide prospective purchasers access to a list of any medical care or prescription drug providers in the prospective purchasers' service areas prior to purchase.

12. DNH did not provide prospective purchasers reasonable access to a list of benefits and services provided through the use of the discount card prior to purchase.

13. DNH marketed, promoted, sold, or distributed its product in the state of Montana for a period of at least 91 days to at least 29 Montana consumers without holding a certificate of registration issued by the Commissioner of Insurance.

CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Insurance. Mont. Code Ann. § 2-15-1903.

2. The Montana Insurance Department is under the control and supervision of the Commissioner. Mont. Code Ann. §§ 2-15-1902 and 33-1-301.

3. The Commissioner and Insurance Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.

4. The Commissioner shall administer the Insurance Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).

5. “Pharmacy discount card” means a paper or plastic device or other mechanism arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount on one or more prescription drugs, and that is not combined with another type of medical care discount. Mont. Code Ann. § 33-38-102(8).

6. “Medical care discount card” means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount in a medical care-related purchase from a health care provider. The term does not include a pharmacy discount card unless a pharmacy discount benefit is combined with another type of medical care discount. Mont. Code Ann. § 33-38-102 5(a)-(b).

7. Although the discount card sold by DNH to Montana consumers may appear to be a pharmacy discount card, it is as a matter of law a medical care discount card because the pharmacy discount benefit is combined with medical care discount benefits on medical care-

related purchases from health care providers such as prescribed medical equipment, lab work, contact lenses, and imaging such as MRI scans and x-rays.

8. A "medical care discount card supplier" is a person engaged in selling or furnishing, as either principal or agent, for consideration, one or more medical care discount cards to another person or persons. Mont. Code Ann. § 33-38-102.

9. "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity. Mont. Code Ann. § 33-1-202(3).

10. Respondents are medical care discount card suppliers.

11. According to Mont. Code Ann. § 33-38-105(1), a medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the commissioner.

12. Respondents do not hold a certificate of registration.

13. DNH has committed at least ninety-one violations of Mont. Code Ann. § 33-38-105 by marketing, promoting, selling, or distributing its product in the state of Montana for a period of at least 91 days to at least 29 Montana consumers.

14. Respondents violated Mont. Code Ann. § 33-38-104(1) by failing to give consumers a thirty-day right to cancel memberships and by failing to ensure that each purchaser or user received with the card a notice stating the terms under which the medical care discount card may have been returned or canceled.

15. Respondents violated Mont. Code Ann. § 33-38-103(2)(a) by failing to state on their medical care discount cards that the product was not insurance in bold and prominent type of at least 14 points in size.

16. Respondents violated Mont. Code Ann. § 33-38-103(1)(c) by failing to provide prospective purchasers or users, before purchase of the medical care discount card, access to a list of health care providers, including the name, city, state and provider type.

17. Respondents violated Mont. Code Ann. § 33-38-103(2)(b) by failing to designate and provide the Department with the name, address and telephone number of a medical care discount card compliance officer responsible for ensuring regulatory compliance.

18. Respondents violated Mont. Code Ann. § 33-38-103(1)(d) by failing to enter into contracts with prescription drug and medical care providers in Montana to provide the discounts represented by the Respondents to be granted to purchasers of the card.

19. Respondents violated Mont. Code Ann. § 33-38-103(1)(a) by making misleading, deceptive or fraudulent representations regarding the discount or range of discounts offered by the medical card discount card and the access to any range of discounts offered by a medical care discount card because there were no providers in Montana under contract to provide the purported discounts.

20. A person commits the act of insurance, medical care discount card, or pharmacy discount card fraud, when in the course of offering or selling insurance, a medical discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing

another person to rely upon the misrepresentation to that relying person's detriment. Mont. Code Ann. § 33-1-1302

21. Respondents violated Mont. Code Ann. § 33-1-1302 by representing that the medical care discount card provided benefits which were not provided when DNH did not have contracts with any medical care or prescription drug providers obligated to honor the DNH discount card and by representing that the medical care discount card was a valid and lawful product in Montana. Respondents made these representations knowing that they were untrue or with reckless indifference as to the truth of the representations with the intention of causing consumers to rely on the misrepresentation to the consumers' detriment.

RELIEF REQUESTED

1. For violating provisions of the Montana Insurance Code, staff of the Department seeks to impose an administrative fine against each Respondent not to exceed \$25,000.00 for each of the violations of the Montana Insurance Code in addition to all other penalties imposed by the laws of Montana. Mont. Code Ann. § 33-1-317.

2. The Department requests that the Cease and Desist Order be made permanent and that all Respondents, jointly and severally, be required to make full restitution to Montana citizens who purchased the DNH product for all financial losses sustained as a result of medical care discount card fraud together with interest at a rate of 10% per annum from the date of the fraud pursuant to Mont. Code Ann. § 33-1-1302.

3. For violations of Mont. Code Ann. § 33-38-105, the Department seeks to impose an administrative fine not to exceed \$25,000.00 for each day of violation.

STATEMENT OF RIGHTS

You are entitled to a hearing and to respond to this Notice of Proposed Agency Action and to present evidence and arguments on all issues involved in this case. You may have a formal hearing before a hearing examiner appointed by the Commissioner as provided in the Montana Administrative Procedure Act. Mont. Code Ann. § 2-4-601, *et seq.*

You have a right to be represented by an attorney at any and all stages of this proceeding. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this notice to Michael Winsor, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, MT 59601. The hearing shall then be held within 45 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties or by order of the hearing examiner. While so advising Mr. Winsor, your written notice must clearly indicate whether you request a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for handling this case. Pursuant to Mont. Code Ann. § 2-4-603(2), you may not request to proceed informally if the action could result in suspension, revocation, or any other adverse action against a professional license. If you request a hearing, you will be given notice of the date, time, and place of the hearing.

Should you request a hearing, you have the right to be accompanied, represented and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the state of Montana, she or he must comply with the Montana State Bar requirements for appearing *pro hac vice* and *Application of American Smelting and Refining, Co.*, 164 Mont. 139,

520 P.2d 103 (1973) and *Mont. Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006).

CONTACT WITH THE COMMISSIONER'S OFFICE

If you have questions or wish to discuss this matter, please contact Michael Winsor, Special Assistant Attorney General, State Auditor's Office, 840 Helena Ave, Helena, MT, 59601, (406) 444-2040. If you are represented by an attorney, please make any contacts with this office through your attorney.

POSSIBILITY OF DEFAULT

Failure to give written notice of your demand for a formal hearing or for informal procedure within 15 days will result in the entry of a default order imposing any sanctions available under Montana law without any additional notice to you pursuant to Mont. Admin. R. 6.6.101 and the Attorney General's Model Rule 10, Mont. Admin. R. 1.3.214.

DATED this 23 day of March 2009.


Michael Winsor
Special Assistant Attorney General


CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 23 day of MARCH, 2009, a true and correct copy of the foregoing Notice of Proposed Agency Action and Opportunity for Hearing was served upon the following by certified mail, with postage prepaid and return receipt requested:

DNH Consulting Group, LLC
2663 Bellewater Place
Oviedo, FL 32765

Erik Devash
DNH Consulting Group, LLC
2663 Bellewater Place
Oviedo, FL 32765

Tiffany J. Eaton, Esq.
Cove & Associates, P.A.
225 South 21st Ave.
Hollywood, FL 33020
(Attorney for the Respondents)



Darla Sautter, Legal Administrative Secretary
Montana State Auditor's Office